



SIPA's mission: To aid public awareness of how the investment industry operates, to provide guidance to members with an investment complaint, and to pursue improved investment industry regulation and enforcement.

Small Investor Protection Association - A voice for small investors

SIPA SENTINEL

The SIPA Sentinel is issued bi-monthly. From time to time articles and re-prints are included that offer opinions on subjects related to investment and regulation. These are meant to help increase investor awareness, and SIPA may not share these opinions.

WHY NOT AN INVESTOR PROTECTION AGENCY?

For many years (since 2004) SIPA has called for an independent investor protection agency. This was the top recommendation in the CARP/SIPA report in September 2004 "*Giving Small Investors a Fair Chance*", and previously the number one recommendation in the 2001 Consumers Council of Canada report by David Yudelman, *The Scorpion and the Frog: A consumer view of Canadian financial services and ways to transform them*. We continue to include this recommendation in submissions to Government, most recently to the Expert Panel on Securities Regulation:

"We recommend a National Investor Protection Authority (IPA) with a mandate for investor protection in all financial sectors. The IPA would be independent from the industry regulators and empowered to investigate or order investigations by police or regulators. The IPA would be established by statute and funded by Government."

Therefore I was pleased to see a news headline "*Call for Investor Protection Agency*" (<http://www.nbcconnecticut.com/news/>) in my Google alerts. While it is a news item from the United States it does indicate that small investors are becoming more aware of the need for an independent authority to protect consumer/investors. It appears the US is ahead of us in seriously advocating a consumer agency but there are some initiatives that provide optimism.

The Ontario Securities Commission (OSC) has announced a new initiative for an Investor Advisory Panel and terms of reference are available on the OSC website. The website states "*Panel members will be selected in part to ensure that the Panel reasonably represents a broad range of investors. A selection committee consisting of three Part-time Commissioners will interview short-listed candidates. The Chair of the Commission will appoint the Chair of the Panel and the other Panel members based on the recommendations of the selection committee.*" Applications are due by April 30, 2010. Hopefully this new initiative will prove more successful than the OSC's last attempt with the Investor Advisory Committee which was collapsed after two years.

However we feel that something more than advisory panel is needed. SIPA members should write to their political representatives asking them to support the urgent need for a Canadian Investor Protection Agency. They should look carefully at the terms of reference for the OSC IAP (http://www.osc.gov.on.ca/documents/en/Investors/iap_20100319_request-applications.pdf)



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and they should watch this space for an evaluation from SIPA next issue. In general, though, the principle should be supported now for the whole of Canada and members should be pointedly telling their representatives that too many Canadians are losing their life savings and have nowhere to turn. Tell them the recent revelations of Ponzi schemes across Canada have revealed once again that the regulators are unable or unwilling to stop these frauds from happening and provide no assistance to victims.

TALKING TO THE MEDIA

Newer members may not be aware of SIPA's approach to speaking to the media. We believe it is helpful for small investors if more investors speak out, and we feel the industry may be more receptive of responding to your claim if they see you are speaking to the media ... it's not necessary to mention the company because they will know if you use your own name. We encourage members to speak to the media whether or not you want to reveal your name, however you should first speak with your lawyer to determine whether it would be appropriate to do so.

If your lawyer advises that it would be appropriate he will provide guidelines and there are some cautions.

1. Never mention the firm name or the adviser's name unless there is public documentation providing detail. They could sue you for libel and they have deep pockets. However the media can also provide guidance in this area as they also have responsibilities.
2. Never call them names or make derogatory remarks regardless of what you feel.
3. If you are angry do not speak to the media.
4. Stick to the facts - For example you lost a certain amount, you feel they traded without authority or sold you unsuitable investments, or didn't respond, or whatever.
5. The media likes to have a name. You can tell them not to publish your name but use a pseudonym. They will need your real name but will honour your request not to publish. If they insist on your real name and you don't want it published, don't talk to them.

Some of the issues that are important:

- the regulators don't pay restitution, but will investigate to see if rules have been breached. If they find they have it could reinforce your case.
- victims must deal with the industry or courts to resolve disputes except in Quebec where the regulator will examine certain claims and pay restitution.
- Following the industry process through to the Ombudsman for Banking Services and Investments (OBSI) can take a long time. Sometimes more than two years. OBSI requires small investors to try to resolve their dispute with industry before opening a file. This whole process can consume a lot of time and sometimes more than two years
- dealing with the industry dispute resolution process can be intimidating and frustrating
- it takes time to deal with a life-altering event like the loss of your savings. It is devastating and it takes time to recover and be able to deal rationally with it and discover the options for resolving your dispute
- the limitation period of two years is not enough



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- the cost of litigation is too high for many
- the damage is far greater than just the monetary loss

Journalists work to deadlines and often have only a few hours to prepare an article for publication. We are preparing a roster of investors who are prepared to speak to the media and would ask you to send me an e-mail or a letter stating that you approve SIPA providing your name to journalists. That way we will be better able to respond to journalistic requests.

In addition to your name we will need a minimum of information including whether you have resolved your issue and how or where you are in the dispute resolution gauntlet, and what issues you feel are important and prepared to talk to the media about.

PONZI PREDATOR COMMITS SUICIDE

CBC News

Robert Mander was a trusted financial adviser who convinced dozens of previously wealthy Ontarians to invest in a complicated scheme. Earlier suspicious investors went to court to force Mander and E.M.B. Capital Growth Corp to repay more than \$16 million and police were called to Mander's home where they found his body.

A man accused of swindling hundreds of southern Ontario investors out of tens of millions of dollars killed himself at his luxury home west of Toronto. Robert Mander, 52, was a trusted financial adviser who persuaded dozens of wealthy business people from the Oakville region to invest millions in a complicated system of loans that promised huge returns.

Since then, more than 100 others who invested with Mander or through some of his associates have been desperately trying to find out what happened to their money. Court documents on behalf of dentist Davide Amato, who started up S.A. Capital Growth Corp. in order to do business with Mander, allege that the money has disappeared. He and the company suspect Mander was moving it around, never investing it, but shuffling it in a Ponzi scheme.

Investors, who did not want to go public, say they were lured by Mander who said he followed a strict formula for investing in startup companies and stocks valued at under \$10. He recruited more than a dozen friends and associates to act as top-level investors, wooing them with promises of 25-per-cent returns.

Those top-level investors incorporated their own companies to gather investments from their own friends and relatives. These recruiters would cobble together large short-term loans that went to Mander or his companies on promises of an additional 25 per cent profit.

And since it was so lucrative, investors say, they agreed to keep rolling over their investments, year after year, rarely cashing out. Many of those recruiter-investors, some so loyal that they went to court last week to support Mander, were shocked to learn of his sudden death, as were his neighbours on a tiny cul-de-sac of million-dollar homes east of the hamlet of Freulton.

With no record that their money was ever invested, investors now fear there will be little to recoup of the tens of millions that are missing.



WHERE ON EARTH IS HARRY SNOEK

Sat, March 27, 2010 from the SIPA Blog

"Where on Earth is Harry Snoek" reads the Toronto Star headline on Saturday, March 27, 2010. This is also what as many as 200 investors would like to know. The Star reports that those who have come forward to the Star and who are trying in Ontario courts to recoup their losses have lost more than 34 million." The total losses are expected to be much higher.

Another made in Canada Ponzi scheme. It seems almost every day another Ponzi scheme is revealed. The financial market meltdown raised investor concern as the media flooded the country with the latest news of financial failure and the plunging market values. The news made investors wary of making any investments and caused many others to cash in investments to avoid further loss.

Ponzi schemes cannot survive when more people want to cash in their investments than new money can pay. When fraudsters stop making payments the investors will object and make complaints which expose the fraud. As long as the cash keeps coming in he can continue to operate. In many of the cases now being revealed the fraudsters operated for decades.

Snoek traded on his father's name as well as church affinity and the faith of his countrymen. The Snoeks came from the Netherlands and attended the Christian Reformed Church. Who wouldn't trust a church going fellow countryman? Many seniors did and lost all their savings.

Harry took over his father's business more than a decade ago and operated as Harry Snoek Limited Partnership. He was involved in real estate development and convinced investors to give him their money for a promissory note that promised to pay them back with modest interest. When the interest payments stopped, questions were asked and excuses provided. More promises made, but not kept. Some investors are trying to get their money back through the Ontario Courts.

Now the victims realize their money is gone and wonder where on earth is Harry Snoek.

WHAT'S IN A TITLE?

Small investors encounter a profusion of titles when they search for a financial adviser. Bill Carrigan is a technical analyst and one of my favorite writers. His recent article is a useful overview of some of the confusing layer of registration categories and proficiency levels, and he's kindly agreed to let us reprint it for SIPA members. .

Financial planning designations grow on trees

February 06, 2010 - Bill Carrigan

Most financial writers know the easiest way to stimulate their readers is to simply ridicule the gold bugs. I confess to engaging in gold-bug hazing over the years and generating the predictably angry reaction. It appears my recent item on the financial planning industry ruffled a few feathers. It has also generated many questions on the various advice categories.

The problem is the confusing layer of registration categories and proficiency levels that the investment industry serves up to the public. For starters, investors should understand that most



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industry professionals are sales and marketing people, with a variety of investment-related skills.

Think of the financial-services industry as a manufacturer of investment products – and think of private investors as the buyers of investment products.

And keep in mind that today's financial services industry is a relatively new creation that was spawned in the early 1980s. Before that time there were distinct divisions in the services offered by the industry players. You purchased stocks and bonds from a broker. You bought insurance from an insurance agent. You bought mutual funds from a mutual funds sales representative.

The early 1980s was ground zero for the great 20-year secular advance in global stock prices – and the financial planning industry. Boomers began to ask their brokers financial planning-type questions – questions few of them were capable of answering. This opened the door to financial planning, using financial factors such as insurance, retirement planning, estate planning and education planning.

The adviser food chain became even more complicated due to the big banks' entry into the financial services industry to offer one-stop shopping

At the bottom of the sales/adviser food chain are the front-line bank branch mutual fund sales representatives. Next is the in-house financial planner. These advisers are subject to tight, centralized restrictions and their mandate is to do no harm, sell in-house products and keep the institution controversy-free. Advisers at that level will not be permitted to attempt any type of security analysis.

Some of these sales people/advisers will aspire to move up the food chain and become fully licensed investment advisers. The investment adviser will have to complete a series of industry studies, with some institutions also requiring a rigid training program. This is where the creativity and latent investment talents of the adviser are set free because security analysis is permitted and expected by their customers.

Some investment advisers will deal only in mutual funds, along with common stocks and bonds recommended by their own research department. The more experienced advisers will adopt their own strategies using options, exchange-traded funds and futures contracts.

Some will partner with other in-house skill sets such as insurance and accounting experts and form an in-house management team. They may charge a fee calculated from the percentage of assets under management. In most cases the client/adviser relationship is non-discretionary – meaning the client must approve every investment decision

At the top of the adviser food chain we have the associate portfolio manager and the portfolio manager. These advisers will provide discretionary portfolio management services and are typically found running their own money management firms. These advisers will often carry designations such as CFA, CA, MBA and CIM.

Bill Carrigan is an independent stock-market analyst.

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MEMBERS ARE SPEAKING OUT

One our members went to Ottawa to speak to the Liberal Party at an event hosted by two MPs. This is a shortened form of what was said:

My family and I have been victims of a financial crime; I have completely lost faith in the power and will of the government to correct the situation that led to my loss. It has been almost five years since nearly two thousand investors across Canada have lost



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\$250 million from an alleged Ponzi scheme, or so-called "hedge fund", which we were told was a "conservative, long-term investment.

Norshield. No Justice. No Restitution. No mandatory errors and omissions insurance to compensate investors and/or weed out wayward, unsophisticated, commission-driven so-called "advisors", albeit "registered salespersons". There have been only what appear to be intentionally pointless, costly hearings by provincial regulators at taxpayers' expense.

No RCMP, FINTRAC, or other police investigations into one of Canada's largest banks involvement in Norshield, nor another bank's involvement as Guardian of Norshield investments. Nor has the auditor been held accountable for its role in this fraudulent scheme.

Yet enormous sums of monies have been siphoned by a court-appointed receiver or "trustee" and law firm, with no recourse anywhere in Canada for a wronged investor. We must resort collectively, to a costly and time-consuming class action suit when the governments and self-regulatory organizations have failed the Canadian public many times over.

SIPA Communications - 2010

As more members are volunteering to help, SIPA is taking steps to improve communications in 2010. We are making some subtle changes to the SIPA website. There are links to TV programs on our website front page. If you haven't seen the Earl Jones programs, it is worthwhile viewing them by visiting the SIPA website at www.sipa.ca and clicking on the links.

In addition to our website, we are communicating to the public using a blog (www.smallinvestors.blogspot.com). This was set up a few years ago but was inactive until recently. SIPA has started using Newsvine (<http://sipa.newsvine.com>)

We have also started using Twitter and Facebook as we try to improve communications.

We are hoping to introduce video conferencing for members in the not-too-distant future, allowing members from across the country to participate in face-to-face meetings on a regular basis. We'd welcome any comment and suggestions about this plan, and any help Internet-savvy members might be able to give us in getting the project off the ground. Contact Stan Buell at our e-mail sipa@sipa.ca

SIPA MEMBERS HAVE THEIR SAY

We intend to include a member's page in the *Sentinel* for members' letters and comments. Please try to limit these to about 250 words and be aware that they may be edited to fit the space available. Write to SIPA by regular mail or e-mail and indicate the subject as Member Comment.

We prefer signed comments, but will on occasion publish anonymous contributions if there's a good reason for anonymity. Either way, please provide your full name and telephone number for our internal verification purposes.



PUTTING CLIENTS BEST INTERESTS FIRST

SIPA Blog, Saturday, March 27, 2010

"*Putting Clients' Best Interests First*" is an appropriate headline for this conference on fiduciary standards. From the discussions with participants from Canada, the United States and the United Kingdom it appears (no surprise to Sipa) that Canada is lagging behind in investor protection. The principle reason is poor regulation.

In general, the failure of legislators and regulators to hold manufacturers, distributors and sellers of financial products to a fiduciary standard spells trouble for investors.

While lawyers (at least those representing industry) may argue that Canadian common law standards for duty of care provide adequate protection for investors, they seem to overlook (among many other things) the fact that limitation periods (the statute of limitations) in most provinces have been reduced to two years from six years which means simply that if you fail to take civil action within two years of the causal event you could be statute barred from seeking dispute resolution through the courts.

Most victims of substantial loss will take more than two years to get their heads around the impact of this life-altering event, find out how to address the issue, and proceed through the industry's process.

If you have a managed account or a discretionary account a fiduciary duty is implied. However, it is common practice for brokers to handle your account as a discretionary account without completing the requisite forms. Completing the forms is not in the broker's best interests as it imposes a higher standard. This higher standard could invoke complete restitution whereas with duty of care it is often argued there is a shared responsibility and as a result a proportional settlement.

Let us hope that something positive will evolve from this important exchange. There is no doubt that the financial market meltdown has raised awareness across the board.

WHISTLEBLOWER WINS

The Toronto Sun reports from Ottawa that Joanna Gualtieri has finally after 17 years won her case in court. She exemplifies the issues that whistleblowers face as every attempt is made to intimidate and discredit those brave Canadians prepared to come forward and tell the truth.

Since Gualtieri first stepped forward she founded the Federal Accountability Initiative for Reform (FAIR) group which promotes integrity and accountability within government by empowering employees to speak out without fear of reprisal when they encounter wrongdoing. SIPA believes that a national authority is needed that would apply to all Canadians and not just government employees, and we fully support FAIR in their objectives and provide a link to their website.

The Sun article by ALTHIA RAJ, Parliamentary Bureau, on April 7, 2010 states:

In what is being hailed as a victory, a 17-year battle between a federal whistleblower and the federal government has ended with an undisclosed financial settlement.



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Joanna Gualtieri, a former foreign affairs realty portfolio manager, began to file reports alleging the department was spending extravagant amounts on accommodations for Canadian diplomats abroad in 1992.

She claims her bosses ignored her warnings and tried to censor reports that described how the government's multi-million-dollar properties were being misused while extra funds were disbursed to rent luxurious accommodations that diplomats demanded. When she went public, Gualtieri said she was harassed, given a dead-end job and later ended up on unpaid medical leave. In 1998, she launched a \$30-million harassment lawsuit.

Former Liberal MP and justice department lawyer, David Kilgour called Gualtieri a "Canadian hero" and said she was treated "atrociously." "Anyone who was involved with this case should be ashamed of themselves," he said.

Joanna Gualtieri should be recognized as a true hero for speaking out against fraud and corruption in our society. We are as proud of her as any of our Olympic winners. It is a great personal sacrifice to stand up for what is right and take on powerful organizations with ranks of highly paid lawyers and what seems like overwhelming resources and slim odds of winning or even surviving the battle.

AN OVERVIEW OF RECENT PONZI SCHEMES

The Canadian Press issued an article February 25, 2010 listing some of the Ponzi schemes revealed, many of them due to the financial market meltdown in mid 2008. The meltdown dried up new investors and made existing investors cautious with many wanting to withdraw funds.

- Earl Jones, who duped 158 investors of about \$50 million over 20 years in Montreal.
- Andrew Lech scammed between \$50 to 70 million, mostly from Ontario investors, and was handed a six-year prison sentence.
- Former Nasdaq stock market chairman Bernard Madoff is serving a 150-year sentence in North Carolina for his multibillion-dollar Ponzi scheme.
- Toronto financial adviser Weizhen Tang is accused of defrauding about 100 investors of some \$30 million through his hedge fund, Oversea Chinese Fund Limited Partnership
- In Calgary, Gary Sorenson and Milowe Brost are charged with fraud and theft. Thousands of investors in Canada, the U.S. and overseas were swindled out of about \$400 million
- In Toronto Harry Snoek is missing and 200 investors lost over \$34 million.
- In Toronto Robert Mander committed suicide leaving 100s of investors wondering about their tens of millions of investments are.

Many victims of proven Ponzi schemes have lost their life savings or their homes. Most victims won't ever get their money back, said forensic accountant Al Rosen of Toronto-based Rosen and Associates. *"If you think any authority in Canada is going to help you recover your money you're dreaming. Canada is ripe for crooks who want to pull off Ponzis, with its lax rules and weak penalties."* Rosen estimates there are well over 100 Ponzis operating in Canada right now that have not been exposed. He bases that estimate on the *"tonnes of requests to investigate stuff"* his firm gets. Most of them his company can't follow up on because the victims don't want their name used as a representative plaintiff in court.